

REMARKS

The examiner rejected claims 1, 4, 5, 7-12, and 14-33 under 35 U.S.C. § 103(a) as unpatentable over 63 F.R. 12124 ("NASD") in view of U.S. 6,278,982 ("Korhammer") and official notice.

While the Examiner states that "the examiner disagrees [with Applicant's previous arguments] and stands by the rejection," Applicant notes that the previous response again resulted in the examiner issuing a different rejection relying on a new combination of prior art. As such, Applicant maintains that the previous response was persuasive as it resulted in a new, different rejection.

Claim 1 recites instructions to "receive, by the computer system at the collector facility from a market participant system, a request to cancel for an execution of one of the received orders... subsequent to receiving the request to cancel, determine whether or not the one of the received orders has not yet been executed by the collector facility." NASD, alone or in combination with Korhammer, fails to describe or suggest such a request to cancel.

The examiner concedes that NASD fails to show a system that receives a request to cancel.¹ In relation to this feature, the examiner relies on Korhammer; however Korhammer fails to remedy the deficiencies of NASD. To the best of the Applicant's understanding, the examiner appears to equate Korhammer's rejection or cancel message 413 to the claimed "request to cancel." In Korhammer upon receipt of an order, the consolidating computer system (CSS) routes the order to the market maker or ECN at the best price until the entire order has been satisfied. After sending the order, the CSS awaits receipt of a response. Based on this response, the CSS informs the consumer whether the order was executed. If the order was executed, the CSS sends an execution message. If the execution was denied, the CSS sends a rejection or cancel message 413 to the consumer. As such, Korhammer's rejection or cancel message 413 is simply a notification to the consumer of whether or not the order was successfully executed and

¹ In this regard, the examiner states "NASD does not explicitly show the system to receive a request to cancel execution of one of the received orders, for a market participant to have received one of the orders also in an order book stored in the collector facility as a reason for order cancellation, to cancel the order if the order has not been executed, or to send a message to deny the request to cancel if the order has already been executed." Office Action, page 3.

is not a "request to cancel" an order. Further, because Korhammer's rejection or cancel message 413 is generated by the CSS and sent to the consumer, Korhammer's rejection or cancel message 413 is not received "by the computer system at the collector facility from a market participant system."

Further, as amended claim 1 requires, instructions to: "subsequent to determining whether or not the one of the received orders has not yet been executed by the collector facility, cancel the order if the one of the received order has not been executed by the collector facility and send a message to a system to deny the request to cancel if the one of the received orders has been executed by the collector facility." Further, according to claim 1, the determination of whether or not the one of the received orders has not yet been executed occurs "subsequent to receiving the request to cancel."

As noted above, to the best of the Applicant's understanding, the examiner appears to equate Korhammer's rejection or cancel message 413 to the claimed "request to cancel." However, because Korhammer's rejection or cancel message 413 is a notification to the consumer of whether or not the order was successfully executed, in Korhammer the order has either been executed or denied prior to generating the rejection or cancel message 413 (see discussion above). Thus, Korhammer fails to describe or render obvious "subsequent to receiving the request to cancel, determine whether or not the one of the received orders has not yet been executed by the collector facility [and] subsequent to determining whether or not the one of the received orders has not yet been executed by the collector facility, cancel the order if the one of the received order has not been executed by the collector facility and send a message to a system to deny the request to cancel if the one of the received orders has been executed by the collector facility," as recited in claim 1.

The examiner also relies on official notice. Applicant *traverses* the official notice and requests that the examiner provide documentary support for each of the features of the claims. In this regard, the examiner contends:

The examiner gives official notice that it would be a well-known matter of logic to either cancel an order or deny a cancel request once a request to cancel an order has been received by a system. Furthermore, there could

be a variety of reasons for canceling an order, e.g., insufficient funds available at execution time, specified time limit passed, participant criteria not met, etc. The particular reason for canceling an order would be a matter of design choice, since this does not affect the nature or functioning of the invention and does not serve any particular purpose or solve any stated problem.²

Applicant disagrees. The reason for allowing a request to cancel is fundamental to the system and is not a "well-known matter of logic," as the examiner contends. The fundamental principle in this context is that the market participant having an order book stored in the collector facility would still maintain that order in an order book on its system. As a consequence, the feature of the request to cancel, prevents the market participant from being exposed to dual liability where the order to be executed in the trading venue and also executed in the market participant's own system. That is, if the system, e.g., an ECN system matches orders between two subscribers and contemporaneously receives an execution from the trading venue, against its quote, the ECN will be required to honor both the internal execution and the trading venue execution. The other reasons given by the examiner for an order to be cancelled do not render obvious the request to cancel as required in claim 1.

For at least the foregoing reasons, Applicant requests that the rejection of claim 1 be withdrawn.

Claims 14, 20, and 21 recite similar features as claim 1. Accordingly, the rejection should be withdrawn.

It is believed that all the rejections and/or objections raised by the examiner have been addressed.

In view of the foregoing remarks, Applicant respectfully submits that the application is in condition for allowance and such action is respectfully requested at the examiner's earliest convenience.

All of the dependent claims are patentable for at least the reasons for which the claims on which they depend are patentable.

Canceled claims, if any, have been canceled without prejudice or disclaimer.

² Office Action, Mail Date June 18, 2009, Page 3

Any circumstance in which Applicant has (a) addressed certain comments of the examiner does not mean that the applicant concedes other comments of the examiner, (b) made arguments for the patentability of some claims does not mean that there are not other good reasons for patentability of those claims and other claims, or (c) amended or canceled a claim does not mean that the applicant concedes any of the examiner's positions with respect to that claim or other claims.

The fees in the amount of \$1318 for the excess claims fee (\$208) and the Petition for Extension of Time fee (\$1110) are being paid on the electronic filing system by way of deposit account authorization. Please apply any other charges or credits to deposit account 06-1050, referencing attorney docket 09857-0029001.

Respectfully submitted,

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